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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fiftieth session
Agenda item 1 (c)

ORGANIZATION OF WORK

METHODS OF WORK OF THE SUB-COMMISSION

Enhancing the effectiveness of the Sub-Commission

Note by the Chairman

Introduction

In light of decision 1998/112 of the Commission on Human Rights to appoint its Bureau to undertake a review of its mechanisms with a view to making recommendations to the Commission at its fifty-fifth session in 1999, the Sub-Commission prepared the present document as the basis for its consultation with the members of the Bureau of the Commission. It was read out by the Chairman of the Sub-Commission at its 10th meeting, held on 10 August 1998. The document was prepared with the active participation of all its members and represents the common position of the Sub-Commission.

Past contributions

1. In reflecting on the enhancement of the effectiveness of the Sub-Commission, it is important first to take stock of the role actually played by this mechanism.

2. The Sub-Commission has played and continues to play a unique role in the field of human rights as the only expert body serving the main United Nations policy-making body, the Commission on Human Rights. The Sub-Commission has been a key engine of the overall expansion of the human rights activities of the United Nations, and has the potential to continue to do so.

3. Our functions have also expanded and changed in emphasis, which is in line with the overall evolution of the United Nations programme in the field of human rights. The initial emphasis of the Sub-Commission was on standard-setting, and the Sub-Commission contributed actively to this process during its first two decades of existence. While this is still a part of the Sub-Commission's tasks, the dominant concerns are now threefold: (a) the promotion and protection of all human rights for everyone and encouragement of implementation by States of human rights norms and standards in accordance with the Charter of the United Nations; (b) the promotion of international cooperation to create the conditions under which realization of all human rights becomes possible for everyone in all societies of our planet; and (c) the identification of new situations or phenomena with serious actual or potential implications for human rights.

4. A review of its activities demonstrates that the Sub-Commission has considerable achievements to its credit, not only in the fields of standard-setting, promotion of standards and encouragement of implementation, but also in the field of human rights policy-making. Because of its openness and its flexibility, it functions as a forum where new ideas have been identified, debated and crystallized into proposals which in due time have affected and changed the work of the other United Nations human rights bodies, including our parent body, the Commission on Human Rights.

5. We would like, very briefly, to list some of the major initiatives taken by the Sub-Commission and which have since become an integrated part of the human rights machinery.

6. For example, the Sub-Commission played a major role in mobilizing the United Nations system in the struggle against apartheid. Its annual report concerning adverse consequences of investment and trade with South Africa during the apartheid era was vital in strengthening the United Nations sanctions which contributed to the transition to a democratic and non-racist Government in that country.

7. The Sub-Commission prepared the initial draft of the United Nations Declaration and later the International Convention on the Elimination of All Forms of Racial Discrimination, the Declaration on the Protection of All Persons from Forced Disappearance, the draft United Nations declaration on the rights of indigenous peoples now pending before the Commission, the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, the Principles for the protection of persons with

mental illness and the improvement of mental health care, and the Guidelines for the Regulation of Computerized Personal Data Files. The preparation within the Sub-Commission of principles and guidelines as well as the first draft declaration on the right and responsibilities of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms paved the way to the establishment by the Commission of the working group which elaborated the so-called Declaration on Human Rights Defenders.

8. The Sub-Commission also played an important role in preparing the basis for the creation of thematic mechanisms of the Commission. The first thematic procedure, the Working Group on Enforced or Involuntary Disappearances, arose from a recommendation of the Sub-Commission. Several studies prepared in the Sub-Commission or its working groups have resulted in the appointment by the Commission of thematic rapporteurs and working groups: the origin of the Special Rapporteurs on freedom of information and expression, on the independence of the judiciary, on religious intolerance, on racism in any part of the world, and the Working Group on Arbitrary Detention can all be traced back to the Sub-Commission.

Present contributions

9. The Sub-Commission makes three relatively unique contributions to the human rights field, namely: (a) undertaking comprehensive studies that contribute to the work of the human rights bodies, particularly to the United Nations treaty-monitoring bodies; (b) bringing to the attention of the Commission situations not under review by the Commission but which appear to reveal gross and systematic violations of human rights or new human rights concerns; and (c) supporting its working groups. In addition, the Sub-Commission has a useful and unique relationship with non-governmental organizations, providing NGOs with access and, thereby, the Sub-Commission with information and expertise. The Sub-Commission has made substantial achievements in each of these aspects and can make further contributions to the Commission for the continued and future enhancement of human rights mechanisms and procedures.

10. The annual review that the Sub-Commission holds on situations of violations of human rights and fundamental freedoms and, in particular, of the policies of racial discrimination and segregation in all countries constitutes a central part of its work. In particular, the Sub-Commission: (a) represents one of the most relevant international forums in the field of human rights; (b) allows new situations, trends and facts that emerge in the world to be expressed; (c) enables an analysis of concrete situations to be undertaken together with more general items that are considered by the Sub-Commission, thus giving to thematic studies a wider comprehension and objectivity; (d) allows the study of countries and cases not considered by the Commission, or allows new facts worthy of attention to be considered; and (e) enables the adoption of urgent measures in cases of emergency situations.

11. The Working Group on Communications which was established under Economic and Social Council resolution 1503 (XLVIII) has, in its 26 years of existence, initiated the review by the Commission of consistent patterns of gross and

reliably attested violations in 75 countries. Over the years there has been a considerable increase in the cooperation of and response from Governments, which has improved the human rights situation in many cases. Most of the country situations now being considered in the public procedure of the Commission arose initially through the 1503 procedure.

12. The role assigned to the Sub-Commission by ECOSOC in the two initial stages of the procedure established in resolution 1503 (XLVIII) is essential to the whole philosophy with which this procedure was originally conceived and should therefore be preserved. This activity also contributes to the identification of general issues which need to be the subject of further study.

13. The thematic working groups form one vital part of the Sub-Commission's method of work. They have provided and continue to provide the possibility for a participatory study of current trends and difficulties in thematically important areas, and involve subtle monitoring of human rights problems by providing a channel for the airing of grievances. The NGOs and government observers who attend provide useful information on the basis of which the working groups draw up their conclusions, recommendations and choice of further steps to be taken.

14. An important aspect of the evolution of the Sub-Commission is precisely that it has provided a platform for NGOs which is much more accessible than that offered by any other United Nations body. While the Commission has also become more open to NGO participation over the years, the unique role of the Sub-Commission manifests itself in particular in the functioning of its thematic working groups. They facilitate interaction between the civil society, Governments and the intergovernmental system, and provide a forum for vulnerable groups which otherwise have little or no access to the international system. Indigenous peoples, representatives of minorities and representatives of groups which often are victims of various kinds of human rights violations, including bonded labour, have the possibility, through the Sub-Commission and in particular through its working groups, to make their voice heard in the official, intergovernmental system. This contributes to a modest but significant change in the balance of traditional relationships which should not be underestimated.

15. The Working Group on Indigenous Populations has made a decisive contribution by drafting the Declaration on the Rights of Indigenous Peoples. In recent years the Working Group has focused on issues relating to indigenous education, language and health. The Working Group also plays an important role in reviewing developments related to the situation of indigenous communities throughout the world, providing a unique forum for indigenous peoples from all over the world to assemble in Geneva, exchange experiences, engage in a dialogue with their respective Governments, and develop common proposals addressed to the United Nations system.

16. The Working Group on Contemporary Forms of Slavery is the only mechanism in the United Nations system for monitoring compliance with several multilateral human rights treaties relating to slavery and slavery-like practices, and has also focused on specific issues. It took the initiative in developing programmes of action against the sale of children, child

prostitution and child pornography; on child labour; and on prevention of the traffic in persons and the exploitation of the prostitution of others. In 1999 the Working Group has proposed to focus on trafficking in women and children.

17. There is no other place where issues relating to minorities are addressed as intensively and constructively as the Working Group on Minorities. It has taken a topic-by-topic approach, focusing on matters such as intercultural and multicultural education for minorities, the role of the media in regard to minorities, and generally on constructive ways to handle situations involving minorities. Its agenda for the coming years includes language rights and ways and means to involve minorities in the planning and implementation of national policies.

18. The sessional Working Group on the Administration of Justice has initiated much of the standard-setting and the mechanisms in this field.

19. The Sub-Commission makes a significant contribution in the form of studies on important human rights issues. It has in recent years embarked on a comprehensive set of studies on economic and social rights, the importance of which the Commission itself has highlighted. It has conducted studies on the problems, policies and progressive measures relating to the more effective realization of economic, social and cultural rights (completed in 1992), on the right to food (1987, now being updated), on the right to housing (1995), on human rights and the environment (1994), on human rights and extreme poverty (1996), on impunity of perpetrators of violations of economic, social and cultural rights (1997), on the relationship between the enjoyment of human rights and income distribution (1997/98), and it is in the process of exploring issues such as the right of access to drinking water supply and sanitation services, and the realization of the right to education, including education in human rights.

20. It has also carried out studies on the impact of HIV/AIDS and human rights, and on human rights and disabilities. It has devoted much attention and several studies to the phenomenon of racism. These activities contributed to the appointment by the Commission of a Special Rapporteur on this subject. Furthermore, it has carried out a study on religious intolerance which led to the appointment by the Commission of a Special Rapporteur. Several important studies related to the situation and the rights of indigenous peoples have been undertaken, starting with the comprehensive study on the discrimination of indigenous populations and continuing with a number of further studies, such as the one on the protection of the heritage of indigenous people and another on treaties, agreements and other constructive arrangements between States and indigenous populations.

21. The Sub-Commission has sought to promote the condition of women and children through studies and activities intended to eliminate harmful traditional practices, and a study on systematic rape and sexual slavery during armed conflicts.

Critical evaluation and further enhancement

22. The Sub-Commission is well aware that every United Nations mechanism has to evaluate its own performance critically in light of new developments and needs. It has over the last few years carried out a thorough review of its methods of work and made significant changes. In 1991/92, an inter-sessional working group prepared "Guidelines concerning its methods of work". Further revisions were made in 1994 and 1995. These have been communicated to the Commission. In 1996 the Sub-Commission initiated a process to adopt a consolidated set of its rules of procedure and methods of work, based on a working paper by one of its members. The intention is to complete this work in 1998. The changes are partly the initiatives of the Sub-Commission itself, and partly in response to suggestions by the Commission. For example, the Sub-Commission has initiated a major change through its decision 1997/113 intended to avoid duplicating work on human rights violations which are considered under the public procedure of the Commission. As a result of some closed meetings which made it possible for the members to discuss practical issues more freely and fully, it has also implemented other major reforms contributing to its effectiveness and efficiency, including improvements in the constructive dialogue between its members. This is an ongoing process that we hope to continue as needs arise.

23. As evidenced in the latest resolution (resolution 1998/28), the Commission appreciates these improvements and has called on the Sub-Commission to continue these efforts with the dual purpose to avoid duplication with the work of the Commission, and to enhance the effectiveness of the contribution which the Sub-Commission can make in its primary role as the expert body advising the Commission.

24. Improvement of cooperation with other human rights bodies. A much broader and systematic consultation with other United Nations and regional human rights bodies should be undertaken. This requires, inter alia, an increase in the staffing of the Secretariat, more resources to the Office of the High Commissioner for Human Rights, and better use of information technology for the processing and accessibility of reports. The Sub-Commission, for its part, would be pleased if more cooperation from the other human rights bodies and agencies was forthcoming.

25. Improvement in the study programme. Efforts are now being made to plan future studies on the basis of identification of priorities among issues which need exploration. The Commission, in its resolutions 1997/22 and 1998/28, has suggested that the Sub-Commission should concentrate on studies which meet the needs of the Commission, the treaty bodies, and the core issues facing the human rights world. The Sub-Commission fully endorses this view, and has taken several recent initiatives in this direction. Based on its comprehensive study on fair trial, it decided to encourage the Human Rights Committee to develop a revised general comment on article 4 to reaffirm that the right to habeas corpus and cognate rights are non-derogable. The Sub-Commission has responded to requests by the Committee on the Elimination of Racial Discrimination by engaging in a joint study with that Committee on the application of article 7 of the Convention dealing with education against

racism, and a working paper on affirmative action. The Sub-Commission has also prepared material for the Committee on the Rights of the Child to assist it in issuing general comments on discrimination and juvenile justice.

26. Two categories of studies are of particular importance:

(a) One type would examine patterns of obstacles to the implementation of human rights and ways to overcome those obstacles. This could be done by using the experience of and material available from the Commission and its thematic and country rapporteurs and from the treaty bodies as well as other sources at its discretion. The Sub-Commission should identify possible areas of study and submit these proposals to the Commission;

(b) The second type would identify situations or phenomena, existing or developing, with serious actual or potential implications for human rights, in order to obtain the knowledge required to propose appropriate responses. This could be done by the Sub-Commission on its own initiative with the necessary authorization from our parent bodies.

27. Membership: independence, expertise and processes of election or selection. The quality of the Sub-Commission's work depends greatly on the independence and expertise of its members. This independence should be strictly observed by Governments and intergovernmental bodies. Criteria for elections have been established and should be applied by Governments in their nomination of candidates and by members of the Commission in their election of Sub-Commission members.

28. When examining a situation which appears to reveal a pattern of gross and consistent violation of human rights in a country of which an expert of the Sub-Commission is a national, it would be desirable that the expert concerned not participate in the debates. The ultimate decision on whether or not such expert will intervene in the public discussion remains the responsibility of the expert concerned.

29. In order to ensure independence of the members of the Sub-Commission, it is vital to give them full protection and the necessary privileges and immunities of experts who carry out an important mission of the United Nations in the field of human rights.

Final observations

30. We consider that the present number of Sub-Commission members (26) provides for a balanced representation of the five regional groups recognized in the United Nations human rights bodies.

31. It is of utmost importance to safeguard the independence of Sub-Commission members and of the Sub-Commission as a collective body. Although cooperation and coordination with other human rights bodies are useful and, in some cases, absolutely necessary, every effort should be made to preserve, encourage and enhance the Sub-Commission's potential not only to build on the initiatives taken by other bodies (including our parent bodies), in accordance with their respective competence, but also to explore new areas in accordance with present-day world events at its own initiative. By the

same token, these bodies should avoid taking actions which would in fact, limit or endanger the Sub-Commission's freedom to take initiatives in accordance with its mandate.

32. The need to avoid unnecessary duplication of work should not limit the competence of the Sub-Commission according to its mandate. The nature of the Sub-Commission as an expert body gives its work a dimension different from that of governmental bodies, and its functions are also different from that of the treaty bodies and those entities operating in the category of special procedures, established by ECOSOC at the recommendation of the Commission, which perform their duties side by side with (not in substitution for) the Sub-Commission. The difference between the treaty-monitoring bodies and the Sub-Commission is that the former monitor fixed treaty obligations while the latter monitors situations, whatever form they take and however unexpected or unpredictable. It is the only expert body to address the situation as it emerges and which has the flexibility to cope with a variety of issues, including those of a novel character.

33. The present mandate of the Sub-Commission is sufficiently broad and flexible to allow it to perform a constructive role, with the complexities of today's world, in the global quest for the promotion, protection and realization of all human rights.

34. The Sub-Commission as a whole and its individual experts should be given sufficient time both to adequately analyse the voluminous documentation submitted to them during its annual four-week session and to properly explore, through consultations among its members and with the assistance of interested non-governmental organizations and Governments, the usefulness and the most effective wording of draft decisions and resolutions. Any reduction of the four-week duration of the Sub-Commission's annual session will certainly not contribute to optimum performance of its tasks. If the present trend of proliferation of documentation persists, the present four-week session will clearly be insufficient, thus making it necessary to further explore the biennialization of the items on the Sub-Commission's agenda.

35. The Sub-Commission on Prevention of Discrimination and Protection of Minorities will maintain its primary role as an advisory body of the Commission on Human Rights, proving it with recommendations based on its expert views and the perspectives of independent members.